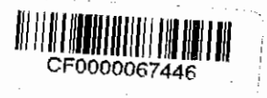

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE M.P. AT JABALPUR.

Criminal Appeal No. 1386/2000

APPELLANT
IN JAIL

..Sukkuram Son of Shri Dhoba aged about 32 Years, Occupation- Cultivation, R/o Village- Palahar, P.S.- Narayanpur, District- Bastar.

VERSUS

RESPONDENT

..The State of Madhya Pradesh through Police Station- Narayanpur, District- Bastar.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE AGAINST THE JUDGEMENT AND CONVICTION DATED 07.04.2000 PASSED BY SHRI M.K.TIWARI, SESSION-JUDGE KAKER IN SESSION TRIAL NO. 272/97.

(19)

(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 1386/2000

Sukkuram

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

Judgment for consideration

Sd/-
Fakhruddin
Judge

Hon'ble Shri Justice Dhirendra Mishra

9 agree

Sd/-
DHIRENDRA MISHRA
Judge

Post for 4-7-2006

Sd/-
AR(J)

(18)
(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 1386/2000

Sukkuram

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

Coram: **Hon'ble Shri Fakhruddin and**
Hon'ble Shri Dhirendra Mishra,JJ

Present : Dr. N.K. Shukla, Sr. Advocate, with Shri Dilip Dubey, counsel for the appellant.

Shri M.P.S. Bhatia, Panel Lawyer, for the State.

J U D G M E N T

Heard learned counsel for the parties.

2. This appeal has been preferred by the appellant against the judgment passed by the Additional Sessions Judge, Kanker in Sessions Trial No.272/97 on 7/4/2000, whereby he has been convicted for the offence under Section 302 of the Indian Penal Code for committing the murder of Chherkuram and sentenced to undergo imprisonment for life.

3. Briefly stated the prosecution story is that on 23/3/1997 deceased Chherku and accused Sukkuram were taking liquor at the house of Batiram at Village-Sitapur, district Kanker. The deceased demanded more liquor, upon which the accused got annoyed and inflicted tangia blows. The deceased sustained injuries on the forehead and other parts of the body. Koope Bai (P.W.2) witnessed the incident and reported to her husband Bati, who in turn informed Dholuram. The Panchayat had taken place. It was on 26/3/1997 that first information report was lodged by Dholuram vide Ex.P/5 in the police station, Narayanpur, which is 45 km. away from Village-Sitapur. The first information report was recorded by the Station House Officer D.S.

Dehari (P.W.4). He came to the spot and prepared the merg intimation (Ex.P/6). The dead body was sent for postmortem which was conducted by Dr. Shashikala (P.W.1). Ex.P/1 is the postmortem report of the deceased and the cause of death shown to be the injuries to vital organ. The statement of eye witness was recorded and after usual investigation the challan was filed.

4. The appellant was charged with the offence. He abjured the guilt and contended that he has been falsely implicated. Since the accused was not able to engage the counsel, the counsel was appointed on the State expenses.

5. During trial, the prosecution examined six witnesses, namely, Dr. Shashikala (P.W.1), Koope (P.W.2), Motli (P.W.3), D.S. Dehari (P.W.4), Sukdeo (P.W.5) and Rattiram (P.W.6). Dholuram, the lodger of the first information report died during the pendency of the trial and he could not be examined. The Court below relying upon the evidence of P.W. 2 Koope, corroborated by the medical evidence, convicted the accused/appellant and sentenced him as narrated above.

6. Learned Senior counsel appearing for the appellant contended that the evidence of P.W.2 Koope is not reliable and the conviction is based on the sole testimony of P.W.2 Koope which is not sustainable in the eyes of law. It is further contended that the inquest witnesses and seizure witnesses were not examined. It is also contended that the offence would not fall under Section 302 IPC and at the most it will fall under Section 304 IPC.

7. Shri Bhatia, learned counsel for the State, on the other hand, supported the judgment of the trial court and contended that the evidence of PW-2 Koope is reliable and there is no infirmity at all. It is

further contended that the evidence of P.W.2 Koope is corroborated by the medical evidence. So far as the offence is concerned, learned counsel for the State contended that the manner in which the tangia blows have been given on the vital parts of the body of the deceased goes to show that the accused intended to cause death and accordingly inflicted the injuries and the case is the one which falls under Section 302 IPC.

8. Perused the record. We have gone through the evidence minutely. PW-2 Koope is the lady in whose house the accused as well as the deceased were taking liquor. In her evidence, she stated that on the date of incident, when her husband had gone to the forest for cutting bamboo, at that time both the accused and the deceased came and consumed one and half bottle of liquor in her house. It is at this moment the accused stated to the deceased that you are insisting for more liquor and he assaulted by tangia until he died. The deceased received injuries on his head. She further stated that three tangia blows were given to the deceased. She then narrated the incident to Motli and other villagers. She also narrated the incident to the brother and other relatives of deceased, who came on the spot the saw the deceased. She also narrated the incident to the Sarpanch of the Village and the police. This witness has been cross-examined. In the cross-examination, P.W.2 Koope stated that she is having two houses. Both the houses are at the distance of 10-15 feet. She further stated she had seen the accused beating the deceased. She asked from the accused why he is beating the deceased. She also stated that police had not inquired from her. She has not made the report to the police station. She stated that Sukku is residing in Palod and Chherku in Tugad. She further stated that at the time of incident, she had not

(24)
(21)

taken any liquor. She also stated that when the deceased and the accused came to her house, they were empty handed. P.W.3 Motli in her statement has stated that P.W.2 Koope came before her and told that Sukku is running away after assaulting the deceased by tangia. P.W.4 D.S. Dehari is the Sub Inspector, who recorded the first information report. P.W.5 Sukdeo is the seizure witness and P.W.6 Rattiram is the Patwari who prepared the spot map and the panchnama.

9. P.W.1 Dr. Shashikala, who conducted the postmortem, was also examined. In her statement, she narrated the injuries found on the body of the deceased. Ex.P/1 is the postmortem report of the deceased Chherku, which reads as under:

> *"Incised wound present over right side of forehead and right eyebrow with left of frontal bone in the size of 3" x 1.5" caused by any sharp object. Right ear was lacerated. Contusion over right mandibular region in the size of 3" x 2" with left of mandible right side caused by any hard and blunt object."*

The cause of death was shown to be the injuries to vital organ and the time of death was within 48-72 hours.

10. In his examination under Section 313 Cr.P.C., the accused denied everything; even his going to the house of Koope (P.W.2). He however admitted his own arrest.

11. The report was lodged and the explanation has been given for delay as the Panchayat was convened. Dholuram, who lodged the reported, died during the pendency of the trial and the report has been proved by D.S. Dehari (P.W.4).

(22)

(28)

12. In the instant case, we found that the evidence of P.W.2 Koope is such on which the implicit reliance can be placed. She is the natural witness and witnessed the incident. She does not have any ill will nor anything has been suggested. The conviction can be based on her sole testimony, however, it requires scrutiny. The learned trial Judge has dealt with her evidence minutely. We have also scrutinized her evidence and found that there is no infirmity in her evidence. The manner in which the offence has been committed shows that the intention is absolutely clear.

13. We are of the considered opinion that the finding, conviction and sentence passed by the trial court do not suffer from any infirmity which may call for any interference by this Court in its appellate jurisdiction.

14. Accordingly, the appeal fails and is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
DHIRENDRA MISHRA
Judge